

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 09/28/2015
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA
CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Demurrer (CLM) - to Complaint; Memo of p&a's in support thereof
CAUSAL DOCUMENT/DATE FILED: Demurrer, 08/28/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Unopposed Request for Judicial Notice is granted. Overrule Demurrer as to 1st and 10th causes of action. Sustain with leave to amend, 20 days, as to the 3rd, 4th, 5th, 8th, and 9th causes of action. Sustain the 11th cause of action without leave to amend.

Discussion:

1st - trade secret misappropriate claim

Civ. Code, § 3426.1(d) describes a trade secret as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

In light of this requirement of secrecy, courts have held that an unprotected disclosure of the holder's secret terminates the existence of the trade secret. See *Vacco Industries, Inc. v. Van Den Berg* (1992) 5 Cal.App.4th 34, 50. And "[i]t is well established that " '[i]f an individual discloses his trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished.' " (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 304, 116 Cal.Rptr.2d 833, quoting *Ruckelshaus*, at p. 1002, 104 S.Ct. 2862;[...]) *Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 57.

¶27 of the Complaint states: "By reason of the facts stated above, all Defendants were given access to PQL's information and trade secrets. All Defendants were under a duty to maintain the secrecy of the PQL information and to limit the use of such information in furtherance of the best interests of PQL."

Tri-State is incorrect that P does not allege in the Complaint that Tri-State agreed to maintain the confidentiality of the trade secret information. The allegation "All Defendants" includes Tri-State. Paragraphs 9 to 11 allege that defendant Does will be added to the complaint when their names and capacities are ascertained, and that each "is responsible in some manner for the acts and omissions alleged in this Complaint." P alleges that each D was the

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agent/servant/employee/joint venture of the other Ds, and they had a unity of interest. Tri-State was added as a Doe defendant on 8/13/15 in accordance with CCP §474.

The Demurrer to this cause of action is overruled. P is not required to allege/provide each evidentiary fact that might eventually form its proof at trial. The allegations of the Complaint are sufficient.

3rd to 5th – Interference w/ prospective economic advantage, Unfair Competition, and Bus. & Prof §17200

The demurrer relies on the CUTSA preemption doctrine. The prevailing rule in California (and the majority rule in federal courts within the Ninth Circuit) is that the CUTSA broadly preempts all common law claims, regardless of the name (e.g., breach of fiduciary duty, breach of confidence, breach of loyalty, conversion, fraud, or unfair competition) that are "based on the same nucleus of facts" as the trade secrets claim. (See *K.C. Multimedia Inc. v. Bank of America Technology & Operations Inc.* (2009) 171 Cal.App.4th 939, 958-59; see also *Silvaco Data Systems v. Intel Corp.* (2010) 184 Cal.App.4th 210, 232-36), disapproved on other grounds by *Kwikset Corp. v. Sup. Ct.* (2011) 51 Cal.4th 310, 337).

In *K.C. Multimedia, Inc.* the 6th District Court of Appeal affirmed the trial court's decision to dismiss the plaintiff's claims for breach of confidence, interference with contract, and unfair competition before trial on motions in limine because they were preempted by CUTSA. (*Id.* at 958-962). "In sum, we agree with the federal cases applying California law, which hold that section 3426.7, subdivision (b), preempts common law claims that are 'based on the same nucleus of facts as the misappropriation of trade secrets claim for relief.' [Citation.] Depending on the particular facts pleaded, the statute can operate to preempt specific common claims asserted here: breach of confidence, interference with contract and unfair competition." (*Id.* at 958-959.) However, the court also noted that "the determination of whether a claim is based on trade secret misappropriation is largely factual. [Citations.] (*Id.* at 954). "In this case, the complaint as a whole rests on factual allegations of trade secret misappropriation. [Citations.] Appellant effectively conceded as much earlier in the litigation, in its opposition to a demurrer to the fourth amended complaint. That concession was warranted. 'A fair reading' of appellant's fifth amended complaint thus 'compels the conclusion that each and every cause of action hinges upon the factual allegation that [defendants] misappropriated trade secrets.' [Citation.] That includes the causes of action for breach of confidence, interference with contract, and unfair competition." (*Id.* at 959).

In a more recent case, *Angelica Textile Services, Inc. v. Park* (2013) 220 Cal.App.4th 495, the court held that even where tort claims may be related to an alleged claim for misappropriation of trade secrets, provided the theory of liability is independent from the claim of misappropriation of trade secrets, CUTSA will not preempt the claim. In *Angelica*, the plaintiff, Angelica Textile Services, sued its former employee, Jaye Park, and his new company on causes of action for misappropriation of trade secrets, breach of contract, conversion, breach of fiduciary duty, unfair competition, interference with business relations and conversion after Park, while still employed by Angelica, began working with Angelica's customers using information from his employment at Angelica to create a laundry business to compete with Angelica. Park was a market vice-president at Angelica and had an agreement with Angelica that he would not, during his employment, become interested, directly or indirectly, in any business similar to Angelica's business. On summary judgment the trial court dismissed the claims for breach of contract, conversion, breach of fiduciary duty, unfair competition, interference with business relations and conversion, holding that those claims were based upon the misappropriation of trade secrets and therefore preempted by CUTSA. At trial, a jury found against Angelica on its remaining CUTSA claim.

Angelica appealed. On appeal, the *Angelica* court reversed the trial court's dismissal of the non-CUTSA claims. As to the common law tort claims, the *Angelica* court held that none of the claims were based on the misappropriation of trade secrets and therefore, where not preempted. Citing *Silvaco Data Systems v. Intel Corp.*, 184 Cal. App. 4th 210 (2010), the *Angelica* court held that CUTSA "does not displace noncontract claims that, although related to a trade secret misappropriation, are independent and based on facts distinct from the facts that support the misappropriation claims." During discovery, Angelica had answered interrogatories asking the company to state all facts that supported their claims. The company had answered by stating that all of its claims were supported by the misappropriation of trade secrets. However, in response to the motion for summary judgment, Angelica produced evidence (which it claimed it learned of after responding to discovery) that provided independent bases of liability under the tort claims, including Park's violation of his non-competition agreement and his duty of loyalty to Angelica and Park's taking of documents that-even if not trade secrets-were still tangible property subject to a conversion claim. The *Angelica* court held that, based upon this new evidence of independently wrongful conduct, it was error for the trial court to conclude Angelica's tort claims were displaced by CUTSA.

Here, ¶140 of the Complaint says that Defendants "did interfere with and cause disruption" to P's relationships with its key employees and independent contractors, and special vendors and suppliers to P. Specifically, it alleges that "[s]uch

interference includes solicitation of PQL employees, solicitation of existing PQL customers, solicitation of potential PQL customers and the use of proprietary trade secret information of PQL to induce vendors and suppliers to work with Defendants and not with PQL." Accordingly, on first glance there appears to be an independent basis for liability based upon the solicitation of employees/vendors. However, Ds' solicitation is not illegal without some unlawful conduct. "[N]o actionable wrong is committed by a competitor who solicits his competitor's employees or who hires away one or more of his competitor's employees who are not under contract, so long as the inducement to leave is not accompanied by unlawful action. [Citations.]" (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 255, 67 Cal.Rptr. 19; *VL Systems, Inc. v. Unisen, Inc.* (2007) 152 Cal.App.4th 708, 713, 61 Cal.Rptr.3d 818.) *Cypress Semiconductor Corporation v. Maxim Integrated Products, Inc.* (2015) 236 Cal.App.4th 243, 261.

What is the independent basis of Tri-States' liability here? There was no agreement alleged between Tri-State and P. What is the unlawful conduct of Tri-State? Since the unlawfulness of the alleged solicitation by Tri-State appears to depend entirely upon whether Tri-State misappropriated trade secrets, the cause of action is preempted by CUTSA.

Plaintiff's 3rd-5th causes of action all appear to rely on the same nucleus of facts as the CUTSA cause of action, namely the alleged misappropriation of Plaintiff's trade secrets, confidential, or proprietary information. P has stated, in its discovery responses, that the confidential and proprietary information is the same as the trade secret information. There are no allegations of conduct separate or distinct from the trade secret claims. As alleged, the 3rd -5th causes of action are not based on any independently wrongful conduct separate from the misappropriation of trade secrets. The causes of action do not appear to specify any separate or independent wrong as required by *K.C. Multimedia* and *Angelica*. Without the claimed misappropriation of trade secrets, the Complaint would "set forth no foundation for any of these claims." (*Silvaco* at 236.) The common theme alleged in each cause of action is the same: the unauthorized use of Plaintiff's trade secrets. Therefore, as alleged, the 3rd through the 5th causes of action are all preempted by CUTSA. To the extent Plaintiff argues that the tort claims are not based on the same nucleus of facts as the misappropriation of trade secrets claim, the allegations are too uncertain.

With respect to Plaintiff's 3rd-5th causes of action, the Court should sustain the demurrer with leave to amend. This is the initial Complaint and it is conceivable that Plaintiff may be able to amend to allege conduct separate from the misappropriation.

8th - fraud

The elements of fraud are: 1) a false representation, usually of fact; 2) knowledge of its falsity; 3) intent to defraud; 4) justifiable reliance upon the misrepresentation; and 5) damage resulting from that justifiable reliance. *Stansfield v Starkey* (1990) 220 Cal.App.3d 59. Fraud causes of action must be plead with specificity, not just to put the defendant on notice of the charge against him, but because the nature of the allegation is so serious. Thus, a plaintiff must "show how, when, where, to whom, and by what means the representations were tendered." *Id.*, citing *Hills Trans. Co. v Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702. "Further, when a plaintiff asserts fraud against a corporation, the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.' [citation]" *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.

The Complaint fails to meet the specificity requirements of fraud generally, and specifically fails to allege the names of persons who made the allegedly false representation, their authority to speak, to whom they spoke, what they said/wrote, and when it was said/written. The Complaint fails to differentiate the Defendants at all. The allegation that the representation was made between 10/27/14 to the present is not specific under any standard. The allegations are not sufficient. The demurrer is sustained with leave to amend.

9th – tortious interference w/ contract

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.

Plaintiff has not adequately alleged a valid contract. The "employee relationship" alleged, even when combined with the fact that each employee signed an NDA, does not imply or infer a valid contract. However, contrary to Defendant's assertion, Plaintiff has alleged that Tri-State had knowledge and that it engaged in intentional acts. ¶70 states, "Defendants had knowledge of the PQL employee relationships and [...] Defendants intentionally and wrongfully

interfered with one or more employee relationship between PQL and its employees."

Sustain with leave.

10th – trade libel

"Trade libel is generally distinguished from common-law defamation and is said to connote " 'an intentional disparagement of the quality of property, which results in pecuniary damage to plaintiff.'" *Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 381. "[A] cause of action for damages for trade libel requires pleading and proof of special damages in the form of pecuniary loss. [citation]" *Leonardini v. Shell Oil Co.* (1989) 216 Cal.App.3d 547, 572.

The Complaint contains a general allegation that P has suffered "and will continue to suffer damages." That is sufficient because only ultimate facts need be alleged: "To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. The allegations are sufficient to survive a demurrer although P's burden at trial will be as noted in *Erlach v. Etner* (1964) 224 Cal.App.2d 69, 73-74 ("This means, in the usual case, that the plaintiff must identify the particular purchasers who have refrained from dealing with him, and specify the transactions of which he claims to have been deprived.") The demurrer is overruled as to the 10th cause of action.

11th – injunctive relief

P has not opposed the demurrer to this cause of action. Sustain without leave to amend.